

RESOLUTION NO. 2011-51

A RESOLUTION OF THE LODI CITY COUNCIL RESCINDING
RESOLUTION NOS. 3312 AND 3344; AND FURTHER
ADOPTING AND IMPLEMENTING PROCEDURES FOR
ADMINISTRATION OF EMPLOYER-EMPLOYEE RELATIONS

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WHEREAS, the Lodi City Council adopted Resolution Nos. 3312 and 3344 on October 15, 1969 and January 21, 1970, respectively, implementing the Meyers-Milias-Brown Act, Government Code Sections 3500-3511, for the purpose of promoting improved employer-employee relations between public employers and their employees by establishing uniform and orderly methods of communication between employees and the public agencies by which they are employed; and

WHEREAS, Government Code Section 3507 empowers a city to adopt reasonable rules and regulations after consultation in good faith with representatives of its employee organizations for the administration of employer-employee relations; and

WHEREAS, the City has consulted in good faith with representatives of its employee organizations to adopt reasonable rules and regulations as authorized by law for the administration of employer-employee relations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LODI DOES HEREBY RESCIND RESOLUTION NOS. 3312 AND 3344 AND RESOLVES AND ADOPTS THE FOLLOWING:

SECTION 1. TITLE OF RESOLUTION

This Resolution shall be known as the City of Lodi Employer-Employee Relations Resolution.

SECTION 2. STATEMENT OF PURPOSE

This Resolution is to implement the Meyers-Milias-Brown Act by providing orderly procedures for the administration of employer-employee relations between the City and its Employee Organizations and for resolving disputes regarding wages, hours, and other terms and conditions of employment. Nothing in this Resolution shall be deemed to supersede any provision of state law; instead it is intended to strengthen employer-employee relations through the establishment of uniform and orderly methods of communication between Employees, Employee Organizations, and the City of Lodi ("City").

It is the purpose of this Resolution to provide procedures for meeting and conferring in good faith with each Exclusively Recognized Employee Organization regarding matters that directly and significantly affect and primarily involve the wages, hours, and other terms and conditions of employment of Employees in an Appropriate Unit and that are not preempted by federal or state law. However, nothing in this Resolution shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy, which includes among others, the exclusive right to determine the mission of its constituent departments and divisions, commissions, and boards; set standards or service; determine the procedures and standards of selection for employment; direct its Employees; take

disciplinary action; relieve its Employees from duty because of a lack of work or for other lawful reason(s); determine the content of job classifications; subcontract work; maintain the efficiency of governmental operations; determine the methods, means, and personnel by which City operations are to be conducted; take all necessary actions to carry out the mission of the City in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

SECTION 3. DEFINITIONS

As used in this Resolution, the following terms shall have the meanings as indicated:

- A. **APPROPRIATE UNIT OR BARGAINING UNIT** – A group of employee classifications or positions placed in an Appropriate Unit established pursuant to Section 15 (Appropriate Unit) of this Resolution.
- B. **CITY** – The City of Lodi, a municipal corporation. Where appropriate herein “City” shall refer to the City Council, the governing body of the City, or any duly authorized management employee of City as herein defined.
- C. **CONFIDENTIAL EMPLOYEE** – An employee who, in the course of her/his duties, has access to information relating to the City’s administration of employer-employee relations or decisions of City management affecting employer-employee relations.
- D. **CONSULT / CONSULTATION IN GOOD FAITH** - To communicate orally or in writing with affected Exclusively Recognized Employee Organizations for the purpose of presenting and obtaining views or advising of intended actions in a good faith effort to reach consensus; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, does not involve an exchange of proposals and counter proposals in an endeavor to reach agreement in the form of a memorandum of understanding. Neither is it subject to Section 19 (Resolution of Impasse) or Section 22 (Administration) of this Resolution.
- E. **DAY** - Calendar day, unless expressly stated otherwise.
- F. **EMPLOYEE(S)** - Any person(s) employed by the City except those persons elected by popular vote.
- G. **EMPLOYEE ORGANIZATION** - Any organization which includes employees of the City and has as one of its primary purposes representing City employees in their employment relations with the City.
- H. **EMPLOYEE RELATIONS OFFICER** - The City Manager or his/her designated representative(s), who shall be the City’s principal representative in all matters of employer-employee relations, with authority to meet and confer in good faith on matters within the scope of representation including wages, hours, and other terms and conditions of employment.
- I. **EMPLOYER-EMPLOYEE RELATIONS** - The relationship between the City and its Employees and their Employee Organizations, or when used in a general sense, the relationship between City management and Employees or Employee Organizations in matters involving Employee wages, hours, and other terms and conditions of employment.

J. EXCLUSIVELY RECOGNIZED EMPLOYEE ORGANIZATION - An Employee Organization which has been formally acknowledged by the City as the sole Employee Organization representing City employees in an Appropriate Unit designated by the Employee Relations Officer. The rights accompanying such recognition include the right to meet and confer in good faith with the City as the exclusive representative of an Appropriate Unit, in matters involving Employee wages and other items and conditions of employment as may be statutorily required subjects pertaining to Employees in an Appropriate Unit, and as such assume the corresponding obligation to fairly represent such Employees.

K. GRIEVANCE - As this term is defined in Section 20 (Grievance) of this Resolution.

L. IMPASSE - An impasse occurs when the representatives of the City and an Exclusively Recognized Employee Organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a memorandum of understanding, and concerning which they are required to meet and confer have reached a stalemate and remain so substantial and prolonged that further meeting and conferring would be futile.

M. MAJORITY REPRESENTATIVE - An Employee Organization, or its duly authorized representative, that has been granted formal recognition by the Employee Relations Officer as representing employees in a City designated Appropriate Unit.

N. MANAGEMENT EMPLOYEE -

1. Any Employee having significant responsibilities for formulating and administering City policies and programs, including but not limited to the City Manager and the department heads; and
2. Any Employee having authority to exercise independent judgment in the interests of the City to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other Employees, or having the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

O. MEDIATION - The effort by an impartial party to assist the parties in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between the City and an Exclusively Recognized Employee Organization through interpretation, suggestion, or advice. Mediation shall not be binding upon the City without the express authorization of the City Council.

P. MEET AND CONFER IN GOOD FAITH - (Sometimes referred to herein as "meet and confer" or "meeting and conferring") - Performance by duly authorized representatives of an Employee Organization and the City of their mutual obligation to meet at reasonable times and to confer in good faith regarding matters within the scope of representation, including wages, hours, and other terms and conditions of employment, in an effort to (1) reach agreement on those matters within the authority of such representatives, and (2) reach agreement on what will be recommended to the Appropriate Unit and to the City Council for ratification. This does not require either party to agree to a proposal or to make a concession.

Q. PEACE OFFICER - As defined in Penal Code section 830.1.

R. PROFESSIONAL EMPLOYEE - Employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and various types of chemical and biological scientists.

S. PROOF OF EMPLOYEE SUPPORT -

1. An authorization card recently signed and personally dated by an Employee provided that the card has not been subsequently revoked in writing by the employee prior to its submission; or
2. A verified authorization petition or petitions recently signed and personally dated by an Employee; or
3. Employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one Employee Organization for the account of any one Employee shall not be considered as proof of Employee support for any Employee Organization.
4. The only authorization which shall be considered as proof of Employee support hereunder shall be the authorization last signed by an Employee.
5. The words "recently signed" shall mean within the 90 calendar days prior to submission of the authorization card, petition, or dues deduction authorization, as the case may be.

T. RESOLUTION - This Employer-Employee Relations Resolution unless the context indicates otherwise.

U. SCOPE OF REPRESENTATION - All matters relating to wages, hours, and other terms and conditions of employment concerning Employees in a City designated Appropriate Unit. - City Rights (Section 5) are excluded from the scope of representation as are matters involving the merits, necessity, or organization of any service or activity provided by law or executive order.

V. SUPERVISORY EMPLOYEE - Any Employee having authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other Employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

W. Terms not defined herein shall have the meanings as set forth in the Meyers-Milias-Brown Act.

SECTION 4. EMPLOYEE RIGHTS

Employees of the City have the right to form, join, and participate in the activities of Employee Organizations of their own choosing for the purpose of representation on all matters of employer-employee relations including, wages, hours, and other terms and conditions of employment. Employees of the City also have the right to refuse to join or participate in the activities of Employee Organizations; however for purposes of this Resolution the classification or position held by the Employee shall be represented by the Exclusively Recognized Employee Organization. Only Management Employees and Confidential Employees shall have the right to represent themselves individually in their employment relations with the City. As required by law, no Employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or any Employee Organization because of their exercise of these rights. In addition, Employees have additional rights as may be granted to them by any memorandum of understanding which may be entered between the City and an Exclusively Recognized Employee Organization of which the Employee is a member.

SECTION 5. CITY RIGHTS

The City retains and has the exclusive decision making authority which includes, but is not limited to, the rights to:

- A. Determine and modify the mission of the City, its organization, its constituent departments, commissions and boards;
- B. Determine the nature, standards, levels, and mode of delivery of services to be offered, and the methods, means, and number and kinds of personnel by which services are to be provided;
- C. Determine the procedures and standards of selection for employment and promotions;
- D. Relieve Employees from duty because of lack of work, lack of funds, or for other lawful reasons;
- E. Maintain the efficiency of governmental operations;
- F. Determine and/or change the facilities, methods, technology, means, organizational structure, and size and composition of the work force, and allocate and assign work by which the City operations are to be conducted;
- G. Determine the content and scope of job classifications;
- H. Determine methods of financing City operations and whether services shall be provided by the City or shall be purchased or contracted for;
- I. Determine style and/or types of City issued wearing apparel, equipment or technology to be used, and to establish and enforce dress and grooming standards;

- J. Determine and change the number of locations, relocations, and types of operations, processes, and materials to be used in carrying out all City functions including, but not limited to, the right to contract and/or subcontract for any work or operations of the City;
- K. Direct its Employees and assign work to and schedule Employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments upon notice, including scheduling and assigning work, work hours, and overtime;
- L. Implement rules, regulations, and directives consistent with law and with applicable memoranda of understanding;
- M. Establish and modify productivity programs and standards;
- N. Discharge, suspend, demote, reduce in pay, reprimand, withhold salary increases and benefits, or otherwise discipline Employees in accordance with applicable law;
- O. Establish Employee performance standards including, but not limited to, quality and quantity standards, and to require compliance therewith; and
- P. Take all necessary actions to protect the public and carry out the City's mission in emergencies.

SECTION 6. MEET AND CONFER IN GOOD FAITH - SCOPE

A. The City through its representatives shall meet and confer in good faith with representatives of Exclusively Recognized Employee Organizations regarding matters within the scope of representation including wages, hours, and other terms and conditions of employment of Employees of a designated Appropriate Unit.

B. The City shall not be required to meet and confer in good faith on any subject preempted by federal or state law or by Lodi City Ordinance, nor shall it be required to meet and confer in good faith on Employee or City Rights as defined in Sections 4 and 5, respectively, of this Resolution. Proposed amendments to this Resolution are excluded from the scope of meeting and conferring.

SECTION 7. CONSULTATION IN GOOD FAITH - SCOPE

The City through its representatives, shall consult in good faith with representatives of Exclusively Recognized Employee Organizations prior to the modification of any rules and regulations for the administration of employer-employee relations, including any amendments to this Resolution. Advance notice on matters subject to consultation, but outside the scope of representation is desirable, but not mandatory.

SECTION 8. ADVANCE NOTICE

A. Reasonable written notice shall be given to each Exclusively Recognized Employee Organization affected by any ordinance, rule, resolution, or regulation, directly

relating to matters within the scope of representation proposed to be adopted by the City, and each shall be given the opportunity to be represented before the City Council prior to adoption.

B. In cases of emergency when the City or City Council determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice of meeting with a Exclusively Recognized Employee Organization, the City or City Council shall provide such notice and Opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution, or regulation. Any ordinance, rule, resolution, or regulation affecting matters within the scope of representation as herein defined is subject to the meet and confer process as herein defined.

SECTION 9. PETITION FOR RECOGNITION

A. The Right to Meet and Confer in Good Faith as Exclusive Representative. An Employee Organization that seeks formal recognition for purposes of meeting and conferring in good faith as the exclusive representative of a City designated Appropriate Unit shall file a petition with the Employee Relations Officer containing the following information and documentation:

1. Name and address of the Employee Organization.
2. Names and titles of its officers.
3. Names of Employee Organization representatives who are authorized to speak on behalf of its members.
4. A statement that the Employee Organization has, as one of its primary purposes, representing employees in their employment relations with the City.
5. A statement whether the Employee Organization is a chapter or local of, or is affiliated directly or indirectly in any manner with, a regional, state, national, or international organization and, if so, the name and address of each such organization.
6. Certified copies of the Employee Organization's constitution and by-laws.
7. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice to the Employee Organization for any purpose.
8. A statement that the Employee Organization recognizes that the provisions of Labor Code section 923 do not apply to City Employees.
9. A statement that the Employee Organization has no restriction on membership based on race, color, religion, sex, national origin, ancestry, physical or mental disability, marital status, veteran status, sexual orientation, medical condition (cancer or genetic characteristic), age (40 and over), or other restriction prohibited by law.

10. The job classifications or titles of Employees in the unit designated by the Employee Relations Officer to be appropriate and the approximate number of member Employees therein.
11. A statement that the Employee Organization has in its possession written proof, dated within 90 days of the date upon which the petition is filed, to establish that thirty percent (30%) of the Employees in the unit claimed to be appropriate have designated the Employee Organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party.
12. A request that the Employee Relations Officer recognize the Employee Organization as the majority representative of the Employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith on all matters within the scope of representation.

B. Petition to be Verified. The petition, including all accompanying documents, shall be verified, under oath, by the executive officer and secretary of the Employee Organization certifying that the statements are true. All changes in such information shall be filed in like manner with the Employee Relations Officer within 10 days of any change.

C. Determination by the Employee Relations Officer. Upon receipt of the petition for recognition, the Employee Relations Officer shall determine whether:

1. There has been compliance with the requirements set forth herein for a recognition petition; and
2. The proposed representation unit is an Appropriate Unit in accordance with Section 15 (Appropriate Unit) herein.

If an affirmative determination is made by the Employee Relations Officer on both of the foregoing two matters, the Employee Relations Officer shall so inform the petitioning Employee Organization, shall give written notice of such request for recognition to the employees in the unit, and shall take no action on said request for 30 days thereafter.

If either of the foregoing matters is not affirmatively determined, the Employee Relations Officer shall so advise the petitioning Employee Organization and shall offer to consult thereon with the petitioning organization. If the determination thereafter remains unchanged, the Employee Relations Officer shall inform the petitioning Employee Organization of the reasons for the determination in writing. The petitioning Employee Organization may appeal such determination in accordance with Section 16 (Appeals) herein.

D. Open Period for Filing Challenging Petition. Within 30 days of the date written notice was given to affected Employees that a valid recognition petition for an Appropriate Unit has been filed, any other Employee Organization may file a competing request to be formally acknowledged as the Exclusively Recognized Employee Organization of the Employees in the same or in an overlapping unit (one which corresponds with respect to some but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of Employee support in the unit claimed to be appropriate of at least

thirty percent (30%) and otherwise in the same form and manner as set forth in section 9A (The Right to Meet and Confer in Good Faith as Exclusive Representative) herein.

If a challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer shall call for a hearing. The hearing shall be conducted within 30 days of the receipt of the challenging petition, on such overlapping petition for the purpose of ascertaining the more Appropriate Unit, at which time the petitioning Employee Organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the Appropriate Unit or units in accordance with the standards in Section 15 (Appropriate Unit) herein.

The petitioning Employee Organizations shall have 15 days from the date notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petition to conform to such determination or to appeal the determination pursuant to Section 16 (Appeals) herein.

SECTION 10. GRANTING RECOGNITION WITHOUT AN ELECTION

If the proof of support shows that a majority of the employees in the Appropriate Unit has designated the petitioning Employee Organization to represent them, and if no other Employee Organization has filed a challenging petition, the petitioning Employee Organization and the Employee Relations Officer shall request the California State Mediation and Conciliation Service, or another agreed upon neutral third party, to review the count, form, accuracy and propriety of the proof of support. If the neutral third party makes an affirmative determination on all points, the Employee Relations Officer shall formally acknowledge the petitioning Employee Organization as the Exclusive Recognized Employee Organization for the designated unit without holding an election.

SECTION 11. ELECTION PROCEDURE

A. if recognition is not granted pursuant to Section 10, the Employee Relations Officer shall arrange for a secret ballot election to be conducted by the California State Mediation and Conciliation Service or some other party agreed to by the Employee Relations Officer and the concerned Employee Organizations(s).

B. All Employee Organizations which have duly submitted petitions and which have been determined to be in conformance with Section 9 (Petition for Recognition) shall be included on the ballot. The ballot shall also offer employees the choice of representing themselves individually in their employment relations with the City under the heading of "no exclusive bargaining agent" or some other label determined by the party conducting the election.

C. Employees entitled to vote in such election shall be those persons employed in positions within the designated Appropriate Unit who were employed during the pay period immediately prior to the date which ended at least 15 days before the election commences. This includes those who did not work during such period because of illness, vacation or other authorized leaves of absence and who are employed in positions by the City in the same unit on the date of the election.

D. An Employee Organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated Appropriate Unit following an election or run-off election if the organization received a numerical majority (50% + 1) of all valid votes cast in the election.

E. In an election involving three or more choices (one of which was "no exclusive bargaining agent"), where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted] within 30 days of the original election] between the two choices receiving the largest numbers of valid votes cast. The rules governing an initial election shall also apply to a run-off election.

F. There shall be no more than one valid election, or one valid run-off election, under this Resolution pursuant to any petition in a 12-month period affecting the same Appropriate Unit. Costs of conducting elections shall be borne in equal shares by the City and by each Employee Organization appearing on the ballot.

SECTION 12. PROCEDURE FOR DECERTIFICATION OF EXCLUSIVELY RECOGNIZED EMPLOYEE ORGANIZATION

A. Filing Period. A decertification petition] alleging that an incumbent Exclusively Recognized Employee Organization no longer represents a majority of the Employees in the designated Appropriate Unit, may be filed no earlier than 12 months from the date of recognition of the Unit. No more than one valid decertification petition affecting the same Appropriate Unit may be filed in any one calendar year provided a period of at least 12 months has elapsed from the filing of any prior petition. Petitions shall be filed with the Employee Relations Officer.

B. Decertification Petition. A decertification petition may be filed by two or more Employees or their representative] or by an Employee Organization] and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct, and complete:

1. The name, address, and telephone number of the petitioner(s) and a designated representative authorized to receive notices or requests for further information;
2. The name of the established Appropriate Unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as the representative of that unit;
3. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the Employees in the Appropriate Unit, and any other relevant and material facts relating thereto; and
4. Proof of Employee support that at least thirty percent (30%) of the Employees in the established Appropriate Unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party within the time limits specified in this Resolution.

C. Recognition Petition. An Employee Organization may, in satisfaction of the decertification petition requirements hereunder, file a petition under this Section 12 in the form of a recognition petition that evidences proof of Employee support of at least thirty percent (30%) of the Appropriate Unit, that includes the allegation and information required by this Section, and otherwise conforms to the requirements of Section 9 (Petition for Recognition) herein.

D. Determination by the Employee Relations Officer. The Employee Relations Officer shall initially determine whether the petition has been filed in compliance with the applicable provisions of this Resolution. If the Employee Relations Officer's determination is in the negative, he or she shall so notify the petitioner and shall offer to consult thereon with the representative(s) of such petitioning Employee(s) or Employee Organization and, if such determination thereafter remains unchanged, shall return such petition to the Employees or Employee Organization with a written statement of the reasons therefore.

E. Appeal. The petitioning Employee(s) or Employee Organization may appeal such determination in accordance with Section 16 (Appeals) of this Resolution. If the determination of the Employee Relations Officer is in the affirmative, or if his or her negative determination is reversed on appeal, the Employee Relations Officer shall give written notice of such decertification or recognition petition to the incumbent Exclusively Recognized Employee Organization and to Employees of the Appropriate Unit.

F. Secret Ballot. The Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about 30 days after such notice to determine the wishes of the Appropriate Unit employees as to the question of decertification and, if a recognition petition was duly filed hereunder, the question of representation. The election shall be conducted in conformance with Section 11 (Election Procedure) herein.

G. City Initiated Notice of Election. During the period specified in the paragraph A of this Section 12, the Employee Relations Officer may, on his or her own motion, when he or she has reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, give notice to that organization and all Employees of the Appropriate Unit that he or she will arrange for an election to determine that issue. In such event, any other Employee Organization may, within 15 days of such notice, file a recognition petition in accordance with this Section 12, which the Employee Relations Officer shall act on in accordance with this Resolution.

H. Acknowledgement of a Different Employee Organization. If pursuant to this Section 12 a different Employee Organization is formally acknowledged as the Exclusively Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any memorandum of understanding then in effect for its remaining term.

I. Decertified Employee Organization. If pursuant to this Section 12 an Employee Organization is decertified, and no other Employee Organization is formally acknowledged as the Exclusively Recognized Employee Organization, those Employees formerly represented by the decertified organization shall thereupon become unrepresented Employees and they shall be bound by all the terms and conditions of any memorandum of understanding then in effect for its remaining term, unless the City Council determines otherwise.

SECTION 13. PROCEDURE FOR MODIFICATION OF ESTABLISHED APPROPRIATE UNITS

A. Requests by Employee Organizations for modifications of established Appropriate Units may be considered by the Employee Relations Officer only during the period specified in Section 12 (Procedure for Decertification of Exclusively Recognized Employee Organization) herein. Such requests shall be submitted in the form of a recognition petition and, in addition to the requirements set forth in Section 9 (Petition for Recognition) herein, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 15 (Appropriate Unit) herein. The Employee Relations Officer shall process such petitions the same as other recognition petitions under this Section 13.

B. The Employee Relations Officer may propose, on his or her own motion, during the period specified in Section 12 (Procedure for Decertification of Exclusively Recognized Organization) herein, that an established Appropriate Unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected Employee Organization and shall hold a meeting concerning the proposed modification(s) at which time all affected Employee Organizations shall be heard.

C. Thereafter the Employee Relations Officer shall determine the composition of the Appropriate Unit(s) in accordance with Section 15 (Appropriate Unit) herein and shall give written notice of such determination to the affected Employee Organizations. The Employee Relations Officer's determination may be appealed as provided in Section 16 (Appeals) herein.

D. If an Appropriate Unit is modified pursuant to the motion of the Employee Relations Officer hereunder, Employee Organizations may thereafter file recognition petitions seeking to become the Exclusively Recognized Employee Organization for any new unrepresented Appropriate Unit(s) pursuant to Section 9 (Petition for Recognition) herein.

E. The Employee Relations Officer shall review all requests for establishment of additional units or the deletion and merger of existing units. The Employee Relations Officer's recommendations after consultation with Employee Organizations shall be submitted to the City Council for proposed adoption.

SECTION 14. PROCEDURE FOR PROCESSING REQUESTS FOR MODIFICATION OF APPROPRIATE UNITS

An Employee Organization may file a request to become the Exclusively Recognized Employee Organization of a unit alleged to be an Appropriate Unit that consists of a group of Employees who are already a part of a larger established unit represented by another recognized Employee Organization. The timing, form and processing of such request shall be as specified in Section 13 (Procedure for Modification of Established Appropriate Units) for modification requests.

SECTION 15. POLICY AND STANDARDS FOR DETERMINATION OF APPROPRIATE UNIT(S)

A. The Employee Relations Officer, after reviewing the petition filed by an Employee Organization seeking formal recognition as an Exclusively Recognized Employee Organization, shall determine whether the proposed unit is an Appropriate Unit. The principal criterion in making this determination is whether there is a community of interest among the Employees in

the proposed unit compatible with continued and efficient public employment. The following factors, among others, are to be considered in making such determination:

1. Which unit will assure employees the fullest freedom in the exercise of rights set forth under this Resolution.
2. The history of employee relations in the unit and among other Employees of the City.
3. The effect of the unit on the efficient operation of the City and sound employer-employee relations.
4. The extent to which Employees have common skills, working conditions, job duties, or similar educational requirements.
5. The effect on the existing classification structure of dividing a single classification among two or more units.

No unit, however, shall be established solely on the basis of the extent to which Employees in the proposed unit have organized.

B. In the establishment of Appropriate Units

1. Professional Employees shall not be denied the right to be represented separately from non-professional Employees; and
2. Management Employees and Confidential Employees may not be included in the same unit with non-management or non-confidential employees, except that Professional Employees may be included in a unit with Management and/or Confidential Employees. Management Employees and Confidential Employees shall not represent any Employee Organization which represents City Employees who are not Management Employees or Confidential Employees on matters within the scope of representation as defined by the Meyers-Milias-Brown Act.

C. The policy objectives in determining the appropriateness of units shall be the affect of a proposed unit on:

1. The efficient operations of the City and its compatibility with the primary responsibility of the City and its Employees to carry out the City's mission effectively and economically; and
2. Providing Employees with effective representation based on recognized community of interest considerations.

D. These policy objectives require that the Appropriate Unit shall be the broadest feasible grouping of positions that share an identifiable community of interest. Factors to be considered shall be:

1. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions;
2. History of representation in the City and similar employment. However, no unit shall be deemed to be an Appropriate Unit solely on the basis of the extent to which Employees in the proposed unit have organized;
3. Consistency with the organizational patterns of the City;
4. Number of Employees and classifications and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units; and
5. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

E. The Employee Relations Officer shall, after notice to and consultation with affected Employee Organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate, or delete modified classifications or positions in units in accordance with the provisions of this Section 15. The decision(s) of the Employee Relations Officer shall be final and is not subject to appeal under this Resolution.

SECTION 16. APPEALS

A. An Employee Organization aggrieved by an Appropriate Unit determination of the Employee Relations Officer under this Resolution may, within 10 days of notice thereof, request mediation through the California State Mediation and Conciliation Service, or may, in lieu thereof or thereafter, appeal such determination to the City Council for final decision.

B. An Employee Organization aggrieved by a determination of the Employee Relations Officer that a Petition for Recognition (Sections 9A, 9B and (C), Challenging Petition (Section 9D), Decertification Petition (Section 12) or Severance Request (Section 14), or Employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition (Section 12) has not been filed in compliance with the applicable provisions of this Section may, within 15 days of notice of such determination, appeal the determination to the City Council for final decision.

C. Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof shall be served on the Employee Relations Officer. The City Council shall commence to consider the matter within 30 days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party hearing process for a recommended decision. Any decision of the City Council on the use of such procedure, and/or any decision of the City Council determining the substance of the dispute, shall be final and binding.

SECTION 17. DURATION OF FORMAL RECOGNITION

When an Employee Organization has been formally recognized by the City, such recognition shall remain in effect thereafter until such time as the Employee Relations Officer shall determine, on the basis of a secret ballot election conducted in accordance with this Resolution that the Exclusively Recognized Employee Organization no longer represents a

majority of the Employees in the Appropriate Unit or until such time as the Appropriate Unit may be modified.

SECTION 18. DESIGNATION OF EMPLOYEE RELATIONS OFFICER

A. The City Council by the adoption of this Resolution designates the City Manager as the Employee Relations Officer, who shall be the City's principal representative in all matters of employer-employee relations, with authority to meet and confer in good faith on matters within the scope of representation including wages, hours, and other terms and conditions of employment.

B. The Employee Relations Officer is authorized to delegate these duties and responsibilities within his/her discretion.

C. The Employee Relations Officer shall, after notice to and consultation with affected Employee Organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate, or delete modified classifications or positions from units in accordance with the provisions of this Resolution. The decision of the Employee Relations Officer shall be final and is not subject to appeal under this Resolution.

SECTION 19. RESOLUTION OF IMPASSES

A. Impasse. If the meet and confer process has reached impasse (as defined in Section 3 of this Resolution), either party may initiate the impasse procedure by filing with the other affected party (or parties) a written declaration of Impasse and request an impasse meeting together with a statement of its position on all disputed issues. An impasse meeting shall then be scheduled and held by the Employee Relations Officer within 30 days after the date of the filing of the written declaration of Impasse, with written notice to all parties affected. The purpose of such a meeting is:

1. To permit a review of the position of all parties in a final effort to reach agreement on the disputed issues; and
2. If the impasse is not resolved, to discuss the utilization of the impasse procedures set forth in this Section 19B.

B. Impasse Procedures.

1. If either party makes a last, best, and final offer on wages, hours, or working conditions, the other party must provide notice to its principals before presenting the proposal to the other party. Consequently, the City must present any last, best, and final offer to the City Council in closed session, and the Exclusively Recognized Employee Organization must present any last, best, and final offer to its membership. Within 2 business days after consideration of a last, best, and final offer, a party shall inform the other party as to whether the offer is accepted or rejected.
2. If a last, best, and final offer is rejected, either party has the option to request that the dispute be submitted to mediation. If the parties agree to mediate, the costs of mediation shall be borne equally by the City and by

the Employee Organization(s) requesting the Impasse procedure. Mediation shall be conducted by a mutually agreed upon mediator, or a mediator selected by utilizing the California State Mediation and Conciliation Service. All mediation proceedings shall be confidential. The mediator shall not make any public recommendations or take any public position concerning the issue(s) in dispute.

3. If the issue(s) in dispute is not resolved after mediation, or if either party refuses to mediate, the dispute shall be resolved by the City Council. In resolving an Impasse, the City Council may take such action regarding the Impasse as it deems appropriate and in the public interest. Any legislative action by the City Council on the Impasse shall be final and binding on the parties.
4. This Section 19 shall not cover day-to-day meet and confer subjects; rather, this Impasse resolution procedure is intended to apply only to economic provisions set forth in memoranda of understanding between the City and Exclusively Recognized Employee Organizations.

SECTION 20. GRIEVANCE

A grievance is any dispute concerning the interpretation or application of this Resolution, or of a memorandum of understanding between the City and Exclusively Recognized Employee Organizations, or of rules or regulations City policies and procedures governing personnel practices or other non-economic terms and conditions of employment shall be resolved under the grievance procedures set forth in a memorandum of understanding between the City and an Exclusively Recognized Employee Organization or in the absence of such a procedure under the memorandum of understanding, pursuant to the City's Rules for Personnel Administration.

Grievances shall be processed in accordance with procedures established in memoranda of understanding between the City and Exclusively Recognized Employee Organizations.

SECTION 21. MEMORANDUM OF UNDERSTANDING

If a meet and confer process is concluded with full agreement between the City and an Exclusively Recognized Employee Organization, all agreed upon matters shall be incorporated in a written memorandum of understanding signed by the duly authorized City and organization representatives.

The memorandum of understanding shall then be submitted for ratification votes by the City Council and by the Employees of the particular Exclusively Recognized Employee Organization.

SECTION 22. ADMINISTRATION

A. Submission of Current Information. All changes in the information filed with the City by an Exclusively Recognized Employee Organization under items (1) through (12) of its recognition petition under section 9A (Petition for Recognition) herein, shall be submitted in writing to the Employee Relations Officer within 15 days of such change.

B. Submission of Financial Report – Agency Shop Provision. Exclusively Recognized Employee Organizations that are party to an agency shop provision shall annually provide to the Employee Relations Officer and to unit members within 60 days after the end of its fiscal year the financial report as required by Government Code section 3502.5(f).

C. Payroll Deduction on Behalf of Employee Organization. Only Employees of an Exclusively Recognized Employee Organization may be provided payroll deductions of membership dues and then only upon written authorization of the Employees represented in that organization.

D. Use of City Resources. Access to City work locations and the use of City paid time, facilities, equipment, and other resources by Employee Organizations and those representing them shall be authorized only to the extent provided for in the applicable memoranda of understanding and/or administrative procedures, shall be limited to lawful activities consistent with the provisions of this Resolution that pertain directly to the employer-employee relationship and not such internal Employee organization business as soliciting membership, campaigning for office, and organization meetings and elections, and shall not interfere with the efficiency, safety, and security of City operations.

E. Availability of Information to Exclusively Recognized Employee Organizations.

1. The City shall make available to Exclusively Recognized Employee Organizations such non-confidential information pertaining to employer-employee relations as is contained in the public records of the City subject to the limitations and conditions set forth in this Resolution and the California Public Records Act (Government Code §§6250, et. seq.).
 - a. Such information shall be made available during regular City business hours in accordance with the City's rules and procedures for making public records available and after payment of statutorily recoverable costs for reproduction of records.
2. Nothing in this Section 22E shall be construed to require disclosure of records:
 - a. That contain personnel or medical information or consist of information, the disclosure of which would constitute an unwarranted invasion of personal privacy;
 - b. Are not retained in the ordinary course of City business;
 - c. When the public interest served by not making the record available clearly outweighs the public interest served by disclosure of the record;
 - d. Pertaining to threatened or pending litigation to which the City is likely to be or is a party, or to claims or appeals that have not been settled; or
 - e. Exempt from disclosure under the California Public Records Act or other applicable law.

3. Nothing in this Section 22E shall be construed to require the City to do research for an inquirer or to do programming or to assemble data in a manner or to an extent other than usually done by the City in the normal course of business or is required by law.

F. Administrative Rules and Procedures. The City Manager is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Resolution after consultation with affected Employee Organizations.

SECTION 23. RULES AND REGULATIONS

The City Council may adopt such rules and regulations necessary or convenient to implement the provisions of this Resolution and the Meyers-Milias-Brown Act.

SECTION 24. CONSTRUCTION

A. Nothing in this Resolution shall be construed to deny any person or Employee the rights granted by federal or state law or City ordinance.

B. The rights, powers, and authority of the City Council in all matters, including the right to maintain any legal action, shall not be modified or restricted by this Resolution.

C. Nothing contained in this Resolution shall abrogate any written agreement between any Employee Organization and the City in effect on the effective date of this Resolution. All such agreements shall continue in effect for the duration of the term specified therein, unless modified or rescinded by mutual agreement of the parties thereto.

D. The provisions of this Resolution are not intended to conflict with the provisions of the Meyers-Milias-Brown Act. To the extent this Agreement conflicts with any provision of the Meyers-Milias Brown Act, the Meyers-Milias Brown Act will control.

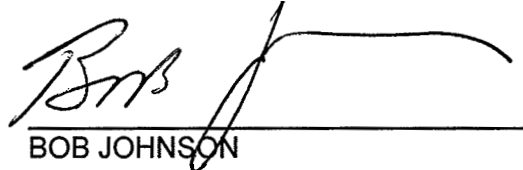
SECTION 25. AMENDMENTS

Proposed amendments to this Resolution are excluded from the scope of meeting and conferring, but are subject to consultation with Exclusively Recognized Employee Organizations pursuant to Government Code section 3507.

SECTION 26. SEVERABILITY


If any provision of this Resolution, or the application of such provision to any person or circumstances, shall be held invalid or unenforceable by any decision maker with jurisdiction to do so, the remainder of this Resolution, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby and, as such, the provisions of this Resolution as severable.

Approved this 6th day of April, 2011.



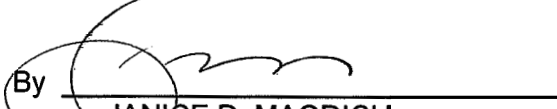
BOB JOHNSON
Mayor

ATTEST:



RANDI JOHL
City Clerk

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER
City Attorney

By 

JANICE D. MAGDICH
Deputy City Attorney

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I hereby certify that Resolution No. 2011-51 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 6, 2011, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Katzakian, Mounce, Nakanishi, and Mayor Johnson

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

RANDI JOHL
City Clerk

2011-51